even if they had, evidence by Chong of such confirmation of payment of such money by the three payers to the accused is only hearsay. Such testimony of Chong also does not constitute evidence of payment by the three persons of the money to the accused.

The only clear evidence that money had been paid to the accused and which was not disputed came from the said Salmiah Talib (*supra*) but her evidence was only in respect of the total cash sum of RM4,512.10 which she received from the payers and which she thereafter gave to the accused. These sums were not credited to the account of the Government which means that the money had not been deposited with the bank. Aminar had testified that whatever money the accused had given her had been deposited with the bank. This could only mean that the accused had not given the money to Aminar for the purpose of depositing the same with the bank to the credit of the Government. At least, the evidence, considered with the fact that the accused did not post the receipt of the money in the cash book, establish, *prima facie*, criminal breach of trust of that amount. At the very least, the charge could have been amended at the close of the case for the prosecution and the accused having to enter her defence.

Given the circumstances of this case, the best course, in the interest of justice, is a retrial. I therefore set aside the order of conviction and sentence. There shall be a retrial before another Session Judge on the same charge or such other charge as the Public Prosecutor may decide bearing in mind that many payers of money may have to be called to give evidence which would not be the case if the accused is charged with a much lesser sum involving far fewer payers leaving the other sums for other charge or charges, which may be left outstanding till the disposal of the other charge. If a conviction be had in the other charge, the other offences alleged in the other charges, if admitted and if the parties consent, may be taken into consideration under the provisions of s. 171A of the Criminal Procedure Code or the other charges be withdrawn. This course of action is worth considering taking into account the fact that the accused was incarcerated in prison, for failing to raise the money required for a bail bond, from 9 May 1992 until 31 October 1992. I hasten to add, it is all up to the Public Prosecutor.

CHIN KON NAM & ANOR.

v.

CHAI YUN PHIN DEVELOPMENT SDN. BHD.

HIGH COURT, KUCHING
DATO' HAJI ABDUL KADIR BIN SULAIMAN J.
[SUIT NO. KG. 107 OF 1993 (II)]
13 APRIL 1994

LAND LAW: Caveat lodged by first plaintiff on land on the ground that he is entitled to or to be benefically interested in the land by virtue of a written agreement - Caveat lodged by second plaintiff on the grounds of being entitled to or to be beneficially interested in the land by virtue of an unregistered Memorandum of Transfer - Registrar serving notice under s. 178 of the Srarwak Land Code - Plaintiffs making application to avoid their caveats from being deemed to have lapsed - Whether the plaintiffs have any caveatable interest in the land.

The first plaintiff entered into an agreement for the purchase of a piece of land (the Land) from the defendant. The first plaintiff failed to keep to the payment schedules specified in the agreement and upto the 28 April 1985 (past the target date specified in the agreement) a total sum of RM190,000 only was paid leaving an outstanding balance of RM250,000.

As the first plaintiff needed a bank loan to meet the remaining sum due to be paid, the first plaintiff and the defendant entered into another agreement for the sale of the Land pursuant to which a bank loan wa granted and the defendant signed a Memorandum of Transfer in favour of the second plaintiff as nominee of the first plaintiff.

The Memorandum of Transfer could not be registered as certain sums due to the authorities had not been paid. The defendant refused to pay the sums and the plaintiffs refused to release the balance outstanding to the defendant. The defendant filed a suit claiming specific performance of the first agreement or alternatively for recission of both agreements, which suit was struck out. The plaintiffs lodged their respective caveats in order to protect their interest in the Land.

The plaintiffs filed a claim against the defendant *inter alia* for recission of the two agreements and for return of the amount already

paid. The defendant successfully applied for the writ of summons of the first plaintiff to be struck out on the grounds that the first plaintiff was an undischarged bankrupt having no locus standi for lack of sanction of the Official Assignee to commence the action.

The defendant applied in writing for the registration of a Memorandum of Charge in respect of the Land and the Registrar issued a notice to the plaintiffs under s. 178 of the Sarawak Land Code (the Code). On the plaintiffs application to avoid their respective caveats from being deemed to have lapsed, the question that arose was whether the plaintiffs have a caveatable interest in the Land.

Held:

[1] The interest to be protected by a caveat under the Code is not any interest but a caveatable interest. It was clear from the affidavits filed that the first plaintiff was seeking a refund of the deposit sum of RM190,000 paid to the defendant. This interest clearly is not a caveatable but a commercial one in which a caveat under the Code will not avail. In the circumstances, an order to the contrary in favour of the first plaintiff cannot be made under s. 178 of the Code.

[2] In so far as the second plaintiff is concerned it is clear that the purpose in lodging the caveat is to prevent dealings with the Land by the defendant to enable the plaintiffs to recover the part payment made towards the cost of the Land and any liquidated damages to be awarded by the Court in the present suit. It was not lodged for the purpose of protecting the estate or interest in the Land.

[3] There is no claim by the plaintiff for specific performance of the agreements. The pending suit merely seeks to rescind the agreement for the purchase of the Land and a refund of the part payment with interest and liquidated damages. In the circumstances the interest sought to be protected by the caveat is not a caveatable one which needs to be preserved.

[Application by both plaintiffs for an order to the contrary pursuant to s. 178 of the Code dismissed. The two caveats to be deemed to have lapsed in accordance with s. 178 of the Code. Costs to the defendant].

Cases referred to:

Virginia Develpoment Pte. Ltd. v. Behem Investments Pte. Ltd. [1988] 2 MLJ 237 ***(refd)***

Buxton & Anor. v. Packaging Specialists Sdn. Bhd. [1987] 1 MLJ 342 ***(refd)***

Legislation referred to:

Evidence Act 1950, ss. 91, 92
Sarawak Land Code, s. 178

For the plantiff - Ernest Chua; M/s. Ernest Chua & Co.
For the defendant - Allan Lao; M/s. Chong Brothers

JUDGMENT

Haji Abdul Kadir bin Sulaiman J:

This is a joint application by the 1st and 2nd plaintiffs under s. 178 of the Sarawak Land Code (hereinafter referred to as "the Code") to avoid their respective caveats lodged againts all that parcel of land situate at Pandungan, Kuching, Sarawak and containing an area of 300. 1 sq. meters, more or less and described as Lot 146 Section 50 Kuching Town Land District (hereinafter referred to as "the said Land"), belonging to the defendant, from being deemed to have lapsed as they both had been served with the notice under the section by the Registrar on or about 17 December 1993. The said notices both dated 14 December 1993 are exhibited respectively as CKN3 and CKF1. The reason for the respective notice is stated to be that the defendant, the registered proprietor of the said land, has made an application in writing for the registration of a memorandum of charge in respect of the said land. The caveat of the 1st plaintiff was lodged on 12 February 1986 and was registered as instrument No. L 1808/1986. The caveat of the 2nd plaintiff was lodged on 26 May 1993 and registered as instrument No. L 6677/1993.

The basis for the lodgment of the caveat by the 1st plaintiff is that he is claiming to be entitled to or to be beneficially interested in the said land by virtue of an agreement dated 8 August 1985 (hereinafter referred to as “the 1985 agreement”) entered into between him and the defendant company. A copy of the notice for the lodgment of the caveat is exhibited as CKN8 to the affidavit of the 1st plaintiff in support of this application (hereinafter referred to as “the 1st plaintiff's affidavit”), affirmed on 14 January 1994. As for the 2nd plaintiff, the basis for the lodgment is that it is claiming to be entitled to or to be beneficially interested in the said land by virtue of an unregistered Memorandum of Transfer dated 8 August 1985 executed between the 2nd plaintiff company and the defendant company. A copy of the notice for the lodgment

of the caveat is exhibited as CKF6 to the affidavit of Chin Kim Foo, a director and the secretary of the 2nd plaintiff in support of the application (hereinafter referred to as "the 2nd plaintiff's affidavit"), affirmed also on 14 January 1994. It is to be noted that the 1st palntiff entered into the 1985 agreement in his personal capacity.

The background to the matter is that, on 10 May 1984, the 1st plaintiff (of Chin Construction [E.M.]) entered into a sale and purchase agreement with the defendant company to purchase the said land at the price of RM440,000. The agreement is in Chinese (hereinafter referred to as "the Chinese agreement") and is exhibited as CKN4A to the 1st plaintiff's affidavit and the translation into English is at CKN4B. Payments are to be made by three instalments i.e. RM20,000. upon the signing of the agreement, a further RM20,000 payable on or before 29 June 1984 and, "The balance of four hundred thousand only (RM400,000) shall be paid in full on or before 9 December 1984 and the landlord shall effect the transfer to the developer". In the agreement, the defendant is described as the vendors and the 1st plaintiff as the developer. Clause 6 of the agreement stipulates that if the developer fails to make payment when due or is in breach, the vendor shall forfeit the money paid by the developer and the agreement shall automatically become void. There is no provision for extension of time or no evidence that any extension of time for payment was allowed. Clause 7 thereof stipulates that if the vendor reneges or refuses to sell the land to the developer, the vendor shall refund the money paid by the developer and shall pay the developer a further like sum as damages.

The 1st plaintiff did not appear to keep to the schedule of payment as stipulated by the agreement for up to 28 April 1985 (past the target date stipulated in the agreement) a total sum of RM190,000 only was paid to the defendant leaving a balance of RM250,000. To meet the remaining sum due to be paid, the 1st plaintiff needed a bank loan. To achieve the purpose, on 8 August 1985, the 1985 agreement was executed between the defendant and the 1st plaintiff (of Chin Construction [E.M.] Sdn. Bhd.), a copy of which is exhibited as CKN5. In this agreement, the 1st plaintiff is also described as the developer but the defendant is described as the owner. The consideration stated therein is also RM440,000 with RM20,000 acknowledged to have been paid and received. As to the balance sum of RM420,000 the time of payment repeats the time schedule contained in the chinese agreement even though as at the date of the execution of the 1985 agreement, the respective dates had lapsed being in the year 1984. Apart from having the same schedule of payment repeated, there is nothing in the 1985 agreement to connect it with the chinese agreement at all. It appears as an independent agreement by itself. It is not to be lost sight of at this juncture that as at the date of the execution of this 1985 agreement, the 1st plaintiff had not fully paid up for the cost of the said land though the last payment of RM400,000 ought to have been settled on or before 9 December 1984 as stated therein and in the chinese agreement. What is in evidence is that up to 28 April 1985 a total sum of RM190,000 only, as stated above, was paid to the defendant towards the purchase price of the said land.

Clause 4 of the 1985 agreement stipulates that upon full payment of the said purchase price, the owner shall execute a valid and registrable memorandum of transfer transferring the said land to the developer and/or his appointed nominee(s). Notwithstanding the provision in the said clause, on 8 August 1985, i.e. the same day the 1985 agreement was executed, the defendant executed a memorandum of transfer (Exhibit CKF4) transferring the said land to the 2nd defendant "In Consideration of the sum of dollars four hundred and forty thousand only (RM440,000) having been paid to us by Gin Nam Development Corporation Sdn. Bhd. ... the receipt of which sum is hereby acknowledged".

On 8 August 1985, i.e. again on the same day the 1985 agreement was executed, a memorandum of charge was also executed between the Public Bank Berhad, the financier, as the chargee and the 2nd plaintiff company as a chargor, as security for the loan of RM250,000 granted by the bank. The 2nd plaintiff's affidavit explains that the 3 documents mentioned above affecting the said land were simultaneously signed on the same day in order to facilitate the release of the loan of RM250,000 by the bank to the 2nd plaintiff. When the said memorandum of transfer and the said memorandum of charge were to be registered, it was discovered that it could not be done because a sum of RM135,000 in lieu of the provision of nine car parks for the said land had not been paid up to the authorities. It was also learnt that if the said sum is not paid the approval for subdivision of the said land into two

shoplots, as intended, could not be given. So, the defendant company was approached to make the necessary payment but it refused and the plaintiffs believing that they have been cheated, withheld the payment of the balance sum due for the price of the said land amounting to RM250,000 to the defendant. The defendant filed a suit in Suit No. KG.317 of 1985 against the 1st plaintiff claiming specific performance of the chinese agreement, an order for the 1st plaintiff to pay the balance of the purchase price of RM250,000 remaining outstanding, interest and damages for breach in lieu of specific performance. In the alternative, the defendant claimed for rescission of both the chinese and the 1985 agreements and a declaration that the part payment of RM190,000 be forfeited to the defendant. This claim of the defendant was struck out by the Court on 25 February 1993. In order to protect the plaintiff's interest in the said land, the respective caveats was lodged by them.

On 6 September 1993 a writ of summons was issued by the plaintiffs against the defendant in the present suit claiming as follows:

(i) An order that the said chinese agreement dated 10 August 1984 and the said English agreement dated 8 August 1985 (the 1985 agreement) be rescinded;
(ii) An order that the defendant refund to the plaintiffs the sum of RM190,000 together with interest thereon at the rate of 8% per annum from 29 April 1985 or at such rate of interest as the Honourable Court deems fit until full settlement;
(iii) An order that the defendant pays to the plaintiffs a sum of RM190,000 being agreed liquidated damages together with interest thereon at the rate of 8% per annum from the date of this summons until full settlement;
(iv) Damages for breach of contract;
(v) Such further and other reliefs as the Honourable Court deems fit; and
(vi) Costs;

As for the 1st plaintiff's claim, the defendant by a summons in chambers dated 6 October 1993 applied for leave to enter conditional appearance on the ground that it intends to apply to set aside the writ against him for being an undischarged bankrupt having no *locus standi* to commence an action for lack of sanction of the official assignee. Leave was granted and by a summons in chambers dated 15 October 1993 the defendant applied for the striking out of the 1st plaintiff's writ of summons or alternatively that the defendant be given leave to file defence against him within 14 days from the date of the order. By a Court order dated 3 March 1994, the writ of summons of the 1st plaintiff against the defendant was ordered to be struck out. Hence there is on record no more claim made by the 1st plaintiff. The claim mentioned in paragraph 6 above remains good for the 2nd plaintiff only.

In its defence to the claim of the 2nd plaintiff, the defendant avers that it had never entered into any agreement with the 2nd plaintiff for the sale and purchase of the said land. The chinese and the 1985 agreements were entered into with the 1st plaintiff only on his own behalf. It admitted that out of the total price for the said land it received a total sum of RM190,000. A registrable memorandum of transfer transferring the said land to the 2nd plaintiff as the nominee of the 1st plaintiff was executed on or about 8 August 1985. It is to be noted that the recital to the memorandum does not state so but CKS5 to the affidavit in opposition of the defendant affirmed on 26 February 1994 makes the 2nd plaintiff the nominee of the 1st plaintiff. By paragraph 7 of the statement of defence, the defendant avers that it was agreed and as shown in the chinese and the 1985 agreements, the defendant was only required to obtain the approval in principle for the subdivision of the said land into two shoplots. Thereafter, the 1st plaintiff was required to pay for all expenses pertaining to the subdivision including paying the sum of RM135,000 in lieu of the provisions of nine car parks. The defendant avers that the 2nd plaintiff has no cause of action and that its claim is barred by limitation. The 2nd plaintiff filed a reply to the defence. In the main the reply contains nothing but extraneous evidence of a parol nature which is not supported by the contemporary documents contained in the two agreements.

By its affidavit in support of this application, the 2nd plaintiff deposed that it was advised and it verily believed that in the interests of justice the two caveats ought to remain in the land register until the determination by the Court of the present suit. It further contends that the said land is the only security the plaintiffs have to pin their rights on and to safeguard their interest, in particular the sum of RM190,000 paid to the defendant and if the said two caveats were removed the plaintiffs will have nothing to salvage from the defendant as the defendant is not a viable concern and would not be in a position to make any refund or pay the plaintiffs

the said sum and the liquidated damages prayed in the present suit in the event that the plaintiffs succeed in the action.

The defendant, by the affidavit in opposition mentioned above avers that the plaintiffs have no caveatable interest in the said land as they have through their statement of claim in this action shown that they are not interested in the said land but only in the rescission of the chinese and the 1985 agreements, refund of the sum of RM190,000 and damages. They did not claim for specific performance. Further their claim is barred by limitation. Furthermore, the 2nd plaintiff has no caveatable interest in the said land as it was never a party in the sale and purchase agreement and in the memorandum of transfer, it was merely a nominee of the 1st plaintiff.

Now, by way of a summary, on account of the Court order of 3 March 1994 striking out the writ of summons of the 1st plaintiff in this action, there is no longer any action pending in favour of the 1st plaintiff in the suit. The evidence of his alleged claim to be entitled or to be beneficially interested in the said land hinged on the 1985 agreement as stated in CKS8. As pointed out earlier, this 1985 agreement from its contents is an independent agreement except for the fact that the time for payment of the various instalments in respect of the sale price of the said land are the same as the time for payment contained in the chinese agreement. Of course, in the various affidavits of the plaintiffs oral evidence was attempted to be introduced but I consider it to be inadmissible in the light of ss. 91 and 92 of the Evidence Act 1950. The terms of the 1985 agreement have been reduced to the form of a document and as such under s. 91 of the Evidence Act no evidence shall be given in proof of the terms except the document itself. Under s. 92 of the said Act, no evidence of any oral agreement or statement shall be admitted as between the parties to the said agreement for purpose of contradicting, varying, adding to, or subtracting from its terms. The provisos to s. 92 do not apply in this case. What is clear from the evidence is that to meet the shortfall of RM250,000 a bank loan was necessary and consequently the 1985 agreement was created. Clause 3 of the said agreement spelt out the terms of payment of the purchase price, the final payment of RM400,000 was due on or before 9 December 1984 which date was past at the time of the execution of the said agreement. Clause 11 is very relevant as concerned the 1st plaintiff. It states:

> 11. In the event of the developer (i.e. the 1st plaintiff) being unwilling to purchase or unable to tender either payment of the purchase price on the due date and is in breach of the terms herein contained, then the deposit and part payment paid by the developer shall be forfeited to the owner (i.e. the defendant) as pre-estimated liquidated damages and this agreement shall be automatically treated as cancelled.

It is not in dispute that a total sum of only RM190,000 had been paid to the defendant leaving a balance of RM250,000 to be settled. The bank loan for that amount has been approved but the plaintiffs refused to part with the amount to the defendant because of the dispute over who should pay the sum of RM135,000 in lieu of the provisions of nine car parks as a condition for the subdivision approval to be given by the authorities. Clause 4 of the 1985 agreement requires the defendant to execute a valid and registrable memorandum of transfer transferring the said land to the 1st plaintiff and/or his appointed nominee, upon full payment of the said purchase price. Notwithstanding the balance of RM250,000 remaining unpaid, on 8 August 1985 the defendant had executed a memorandum of transfer transferring the land in favour of the 2nd plaintiff as evidenced by CKF4. It is not for this Court to speculate as to the fate of this memorandum of transfer upon presentation for its registration. So, what is the interest of the 1st plaintiff in the said land left to be protected? The interest to be protected by a caveat under the Code is not any interest but caveatable interest. I have seriously considered the submission and the authorities cited by the learned Counsel for the plaintiffs. As to the authorities so cited, I find that they are irrelevant in the circumstances of this case. On the submission made, I find that it does not at all impress me to come to the conclusion that the interest the 1st plaintiff seeks to protect is a caveatable one. From the affidavit of the 1st plaintiff, it is deposed that after his earlier civil suit No. KG.317 of 1985 "had been struck out by the Court, the plaintiffs herein demanded from the defendant a refund of the deposit sum of RM190,000 for the said land paid to the defendant between the period 9 May 1984 to 28 April 1985 but the defendant had refused and neglected and still refuses and neglects to refund the said sum of RM190,000

thus forcing the plaintiffs to institute the present action against the defendant." This interest clearly is not a caveatable but a commercial one in which a caveat under the code will not avail. In the circumstances I am satisfied that an order to the contrary under s. 178 of the Code cannot be made. In the circumstances, the application of the 1st plaintiff is dismissed with costs to the defendant.

As for the 2nd plaintiff, the basis for its caveating the said land of the defendant is on his claim to be entitled to or to be beneficially interested in the said land by virtue of an unregistered memorandum of transfer dated 8 August 1985 executed between the defendant and the 2nd plaintiff company. The said memorandum is exhibited as CKF4. As mentioned earlier in dealing with the 1st plaintiff, it is in evidence and not disputed that there is still a balance sum of RM250,000 not paid over the purchase price of the said land. Notwithstanding that, on 8 August 1985 together with two other documents, the memorandum exhibited as CKF4 was executed. Though the 2nd plaintiff is not a party to any of the agreements, it became a transferee by virtue of the 1985 agreement and CKS5, being the nominee of the 1st plaintiff. The question to ask is, has the 2nd plaintiff any caveatable interest to protect on the score that it was the transferee to the memorandum? It does not dispute but in fact admitted that because of the dispute over the payment of RM135,000 to the authorities as a condition for the approval of the subdivision of the said land into shoplots, the payment of the balance sum of RM250,000 towards the settlement of the cost of the said land was withheld from the defendant. In other words, a total sum of RM440,000 stated as the consideration in the memorandum is not true to the knowledge of the 2nd plaintiff and for that matter to the knowledge of the 1st plaintiff as well. In the light of the circumstances, can it seek the aid of equity to have the memorandum enforced against the defendant? In the suit there is no claim for specific performance, any way. The real reason for lodging the caveat can be found in the 2nd plaintiff's affidavit. Sometime in May 1993, learning that the defendant wanted to sell the said land, its caveat bearing Instrument No. L 6677/1993 was lodged on 26 May 1993 so as to protect the company's interest. What is this company's interest? At paragraph 15 of the said affidavit the deponent deposed that the said land is the only security the plaintiffs have to pin their rights on and to safeguard their interest, in particular the sum of RM190,000 paid to the defendant and if the caveat is removed the plaintiffs will have nothing to salvage from the defendant as it is obvious that the defendant is not a viable concern and would not be in a position to make any refund or pay the plaintiffs the said deposit of RM190,000 and the liquidated damages prayed in the present suit should the plaintiffs win their case against the defendant. So it is clear that the purpose of lodging the caveat is to prevent dealings with the said land by the defendant to enable the plaintiffs to recover the part payment made towards the cost of the said land and any liquidated damages to be awarded by the Court in the present suit. It is not for the purpose of protecting the estate or interest in the said land. Now, turning to the suit referred to, paragraph 19 of the statement of claim avers that since the defendant is unwilling and unable to transfer the said land to the plaintiffs and has also abandoned its claim in Suit No. KG.317 of 1985 the defendant should refund the deposit and part payment of RM190,000 to the plaintiffs and pay a further like sum to the plaintiffs as agreed liquidated damages. On that basis the plaintiffs claim against the defendant for the remedies mentioned above at paragraph 7 of this judgment. There is no claim against the defendant for any specific performance. All that is of interest to the plaintiffs including the 2nd plaintiff is the repayment of the part payment made and liquidated damages for the alleged breach. They no longer are interested in the said land but only in getting the contract rescinded (in which the 2nd plaintiff is not a party) and their money back. In *Virginia Development Pte Ltd v. Behem Investments Pte Ltd* [1988] 2 MLJ 273 it was held that once the defendants have repudiated the contract, they no longer have any interest in the said property as purchaser and the caveat ought to be removed. In another case, *Buxton & Anor v. Packaging Specialists Sdn. Bhd.* [1987] 1 MLJ 342 it was held that the respondent in that case was not claiming specific performance of the agreement and by so doing the respondent has clearly shown an intention that it was no longer interested in purchasing the property but only to seek a refund of the deposit and other expenses incurred. To that end it cannot be said that it had any interest in the land capable of being registered. This is exactly what happened in this case. The pending suit seeks to rescind the

agreement for the purchase of the land and a refund of the part payment with interest and liquidated damages. So the interest sought to be protected by the caveat is not a caveatable one which needs to be preserved. In the circumstances, I have no alternative but to dismiss the application of the 2nd plaintiff as well with costs to the defendant.

Application by both the plaintiffs for an order to the contrary pursuant to s. 178 of the Code is hereby dismissed. The two said caveats shall be deemed to have lapsed in accordance with s. 178 of the Code. Costs to the defendant.

DR. MAHESAN A/L SUBRAMANIAM & 2 ORS.

v.

PONNUSAMY A/L P. RAJOO & 3 ORS.

HIGH COURT, KUALA LUMPUR
DATO' DR. ZAKARIA BIN MOHAMED YATIM J.
[ORIGINATING SUMMONS NO. D4-24-94-94]
30 MAY 1994

COMPANY LAW: Notice of meeting - Whether short notice - Previous practice of the company - Whether an agenda of the business to be transacted at the meeting is required - Allotment of shares not done in good faith.

PRACTICE & PROCEDURE: No prayer for declaration - Whether Court can make declaratory order - Discretion - No cause of action when application was filed.

On 15 April 1994, the first defendant, as secretary to Dr. Leela Ratos dan Rakan-Rakan (Chow Kit) Sdn. Bhd. (the Company) issued a notice of board of directors meeting of the company, which was to be held on 25 April 1994. *Inter alia*, it was an agenda in the notice to remove the first plaintiff as a director of the company. The first plaintiff received the said notice on 20 April and on 21 April he wrote to the Secretary to adjourn the said meeting on the grounds that insufficient notice was given to him and the particulars of the allegation against him as contained in the agenda were not given to him. However the meeting of the board of directors was held in the absence of the first and third plaintiff. The first plaintiff was removed as the managing director of the company with immediate effect.

By another meeting held on 14 May 1994 in the absence of the first plaintiff the shares in the said company were allotted to others whereby the first plaintiff lost control over the company. The plaintiff applied to declare the said allotment null and void although there was no prayer for such declaration in the originating summons.

Held:

[1] Since in law, the business to be transacted at the meeting of directors is not required to be included in the notice, it is therefore not the requirement of the law that an agenda be